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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Andrea Brown—Temporary Quarters Subsistence  
Expense Claim

**File:** B-270296

**Date:** December 21, 1995

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## DIGEST

Upon a permanent change of station, an employee and family initially occupied temporary quarters for 1 month and then moved into a duplex house rented pursuant to a 1-year lease. Their household goods were moved in several weeks later. Although the employee apparently had a verbal agreement with the landlord's agent that, notwithstanding terms of the 1-year lease, employee could cancel lease at any time, it is unlikely that such an unwritten agreement contrary to the terms of the written lease would be enforceable. Based on these and other facts, the agency's determination that the employee's occupation of the house was not temporary is affirmed, and the denial of the employee's claim for additional subsistence expenses is sustained.

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## DECISION

Ms. Andrea B. Brown appeals our Claims Group settlement, Z-2869667, July 13, 1995, which disallowed her claim for reimbursement of temporary quarters subsistence expenses (TQSE) incident to a permanent change of station. For the reasons set out below, the Claims Group settlement is affirmed.

## BACKGROUND

Ms. Andrea Brown, a civilian employee of the Department of the Navy, was transferred from the Fleet and Industrial Supply Center (FISC), Charleston, South Carolina, to FISC Norfolk Detachment, King's Bay, Georgia, in October 1994.

Ms. Brown was authorized TQSE for 60 days. She and her family occupied temporary quarters in St. Mary's, Georgia, in October 1994. Her claim for TQSE for October 30 through November 30, 1994, was allowed.

On December 1, 1994, Ms. Brown's husband signed a 1-year lease agreement on a duplex house in St. Mary's. Ms. Brown stated that she and her family occupied the duplex as suitable quarters while they learned the area and looked for a house to purchase, and pending her husband's return from an overseas assignment that he was beginning in January 1995. Ms. Brown and her family occupied the house on December 2, 1994. Their household goods were delivered on December 31, 1994. A memorandum of a telephone conversation an agency representative had with Ms. Brown on March 28 notes that she stated it was her intention to fulfill the lease. Ms. Brown later submitted a lease agreement on the same property for December 1994 only, which the Navy states she provided after being advised that the Navy considered the year's lease as establishing that the quarters were permanent in nature. The Navy disallowed her claim on the basis that the duplex house she was renting was permanent quarters. Our Claims Group sustained the disallowance for the period of December 2 through 28 on the same basis.

Ms. Brown appeals the determination of our Claims Group. In support of her appeal, Ms. Brown has submitted a letter dated August 17, 1995, from the realtor who was the agent of the landlord of the duplex. The letter states that (a) Ms. Brown has continued to search for new quarters and (b) Ms. Brown and the realtor had a verbal agreement that she could cancel the 1-year lease if she found suitable quarters elsewhere.

#### ANALYSIS

The payment of subsistence expenses while occupying temporary quarters is governed by part 5, chapter 2, of the Federal Travel Regulations (FTR), 41 C.F.R. § 302-5. An employee may not be reimbursed for temporary quarters and subsistence expenses after he or she occupies permanent quarters. FTR § 302-5.2(f). However, occupancy of temporary quarters that eventually become the employee's permanent residence shall not prevent payment of the temporary quarters allowance if, in the agency's judgement, the employee shows satisfactorily that the quarters occupied were intended initially to be only temporary. FTR § 302-5.2(c).

What constitutes temporary quarters is not susceptible of any precise definition and that determination must be based upon the facts and circumstances involved in each case. The threshold determination as to whether the quarters were initially temporary in nature is based on the intent of the employee at the time he moves into the dwelling. The factors to be considered in determining whether quarters are temporary or permanent are the duration of the lease, the movement of household goods into the quarters, the type of quarters, expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters. Harrison J. Lane, B-183829, Jan. 2, 1976.

Regarding the duration of the lease, we have held that the execution of a 1-year lease on a dwelling at the employee's new duty station is a clear indication that the employee intends to occupy the rented quarters on other than a temporary basis. Johnny M. Jones, 63 Comp. Gen. 531 (1984), affirmed on reconsideration, B-215228, Apr. 12, 1985. While in the present case the realtor's letter states that Ms. Brown and the realtor had an agreement (apparently verbal) that she could cancel the 1-year lease if she found suitable quarters elsewhere, such a cancellation would appear to have been only at the landlord's sufferance since the copy of the lease furnished us clearly commits the Browns to "the entire rental term" of the lease (1 year unless released in writing by the landlord). It is doubtful whether such an unwritten agreement, inconsistent with the terms of a written lease, would be enforceable. See Restatement (Second) of Contracts 215 (1981).

Nor is evidence of continued search by an employee for a home to purchase sufficient, by itself, to establish the rented quarters as temporary. See Johnny M. Jones, supra. In the present case, under a 1-year lease, Ms. Brown occupied a duplex house, which is a type of quarters that is usually permanent in nature, and as noted, when queried by the Navy, she stated her intention to rent the house for the term of the lease. Her family's household goods were shipped to the duplex several weeks after her arrival. Finally, the record gives no indication that Ms. Brown and her family subsequently vacated the duplex, but indicates that they continued to reside there at least through August 1995.

We believe the record supports the agency's determination that Ms. Brown's occupancy of the duplex did not constitute occupying temporary quarters for the purpose of entitlement to continuation of TQSE. Accordingly, the Claims' Group settlement is affirmed.

/s/Seymour Efros  
for Robert P. Murphy  
General Counsel